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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,077	06/23/2003	Stephen Suffin	10701-006-999	1225
23535 7590 05/18/2007 MEDLEN & CARROLL, LLP 101 HOWARD STREET SUITE 350 SAN FRANCISCO, CA 94105			EXAMINER JONES, DAMERON LEVEST	
			ART UNIT 1618	PAPER NUMBER
			MAIL DATE 05/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/602,077

Applicant(s)

SUFFIN, STEPHEN

Examiner

D. L. Jones

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/8/07 & 10/27/06.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 40-42 and 50-60 is/are pending in the application.  
4a) Of the above claim(s) 57-60 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 40-42 and 50-56 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **ACKNOWLEDGMENTS**

1. The Examiner acknowledges receipt of the amendment filed 2/8/07 wherein the specification was amended; claims 1-39 and 43-49 were canceled; and claims 40 and 54 were amended.

**Note:** Claims 40-42 and 50-60 are pending.

## **RESPONSE TO APPLICANT'S ARGUMENTS**

2. The Applicant's arguments and/or amendment filed 10/27/06 and 2/8/07 to the rejection of the claims made by the Examiner under 35 USC 102, 112, and/or double patenting has been fully considered and deemed persuasive-in-part for the reasons set forth below.

### **Double Patenting Rejection**

The provisional rejection of claim 40 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 49 of copending application 10/193,735 is MAINTAINED for reasons of record in the office action mailed 11/30/05 and those set forth below.

Applicant asserts that the double patenting rejection should be withdrawn because claim 49 has been withdrawn from 10/193,735.

First, Applicant is reminded that a withdrawn claim does not mean that the Examiner will not later examine the claim. For example, a claim may be withdrawn as not directed to an elected species. However, during the course of the prosecution, the Examiner may expand the search to cover a claim that was initially withdrawn.

Art Unit: 1618

Secondly, Applicant is reminded that a withdrawn claim unlike a canceled claim is still pending in an application. Furthermore, review of 10/193,735 indicates that the withdrawn claims were never canceled. Thus, technically, those withdrawn claims are still pending in the application. Hence, the double patenting rejection is deemed proper until such time as a terminal disclaimer is filed, the subject matter is canceled, or the claims are amended such that the double patenting rejection no longer applies.

**112 First Paragraph Rejection (New Matter)**

The 112 first paragraph rejection is WITHDRAWN because Applicant has amended the claims to overcome the rejection.

**102 Rejection**

The rejection of claims 40-42 and 50-56 under 35 USC 102(b) as being anticipated by Cohen et al (Neuropsychopharmacology, 1993, Vol. 8, No. 4, pages 365-370) is MAINTAINED for reasons of record in the office action mailed 7/25/06 and those set forth below.

In summary, Applicant asserts that Cohen et al does not teach any multivariate measurements, but only teaches the calculation of simple univariate averaged data followed by an analysis of variance between three integrated time course curves. In addition, Applicant asserts that Cohen et al is averaging univariate measurements and does not disclose comprising a plurality of univariate measurements to generate multivariate measurements. Finally, Applicant asserts that Cohen et al does not disclose the calculation of a univariate Z score from which a multivariate measurement is derived.

Art Unit: 1618

Applicant's arguments are found non-persuasive for the following reasons.

Based on Applicant's disclosures, the Applicant defines 'multivariate outcome measurements' as quantitative output measurements collected from combinations of univariate neurophysiologic measurements collected from various regions of the brain. The cited prior art meets this limitation because various EED recordings were made under various conditions (three) and the data was analyzed. Applicant's specification does not state exactly how many combinations of variables must be utilized or that one cannot repeatedly analyze the same variable at different conditions since such action would also generate multivariate outcome measurements. Furthermore, the cited prior art discloses statistical analysis consisting of repeatedly measuring multivariate analysis of variance with Greenhouse-Geisser corrections conducted on normalized, relative area values for each frequency band at each electrode under P, LD, and HD condition (see all of Cohen et al, especially, abstract; page 366, second column, first complete paragraph; page 367, first column, second complete paragraph; pages 367-368, bridging paragraph; and page 368, Figure 2). Hence, Applicant's limitations have been met by the cited prior art.

#### **WITHDRAWN CLAIMS**

3. Claims 57-60 are withdrawn from consideration as being directed to a non-elected invention (see 37 CFR 1.142(b) and MPEP 821.03).

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1618

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

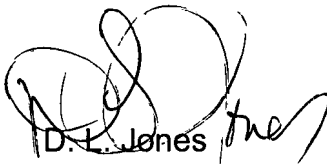
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Application/Control Number: 10/602,077

Page 6

Art Unit: 1618

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



D.L. Jones  
Primary Examiner  
Art Unit 1618

May 14, 2007